Response of the government of the Netherlands to the European Commission's consultation on stakeholder consultation

Introduction

1. The Dutch government agrees with the Commission that wide stakeholder consultation throughout the entire legislative process is essential for effective, transparent, coherent, viable, cost-efficient and legitimate EU law making and helps taking decisions that respect the principles of proportionality and subsidiarity. Continuous consultation and pro-active outreach by the Commission to hear the views of public and stakeholders supports the principles of openness, strengthens the evidence, increases the quality of EU legislation and transparency and helps to bring focus in EU lawmaking.

2. The Dutch government welcomes the Commission's initiative to strengthen its consultation policy and tools and its application in the different phases of the legislation process, from roadmaps and impact assessments to evaluation and fitness checks. The Netherlands also welcomes the Commission's approach to actively reach out to all relevant stakeholders in order to receive the necessary essential input (information, data, views) from those who might be concerned by a Commission's initiative.

3. Stakeholders should be consulted in a systematic manner and, in order to make full use of consultation, it is important that stakeholders' advice is provided before important decisions are made. Consultation of stakeholders should be announced in a timely manner and should preferably take place when there is still enough scope to arrive at alternative options. We also underline the importance we attach to consult national parliaments in an early stage in order that possible objections can be met earlier.

4. It is important that the consultation procedure is clear and transparent; from the beginning of the process to ensure sufficient input from stakeholders to the end of the process in which clear and comprehensive feedback on stakeholders' input should be provided to safeguard legitimacy of decisions.

Feedback to consultation questions

1. **Do you think the Stakeholder Consultation Guidelines cover all essential elements of consultation? Should any of these elements receive more attention or be covered more extensively?**

- In addition to the 10 steps of the consultation process described, we think the guidelines could describe more clearly the exact timing - the place in the policy cycle - of the consultations (also within the impact assessment procedure, as consultations are often only of the sources of input besides data collections and expert groups).
- We also believe it is important that clear criteria are set and made public on the necessity for consultation. These should also be included in the guidelines (e.g. in chapter 1.3) and the 10

consultation steps. If asked, the Commission should also be able to motivate, within a specified timeframe, why it decided not to launch a consultation.
- Furthermore, we have a few questions concerning the supervision of the consultation process: who decides whether a consultation takes place and on which criteria and who decides on the form of the consultation strategy? Is the strategy evaluated by someone, a special board or department within the Commission before the strategy is put into practice and is it monitored while the process is ongoing (e.g. the Impact Assessment Board or something similar)?

2. Do you think the guidelines support the identification of the right target audiences? If not, how would you improve them?

- The guidelines provide an elaborate description of how to identify target audiences. It is important to use the right communication channels to identify the stakeholders. In the guidelines, social media are rightfully mentioned as a way to advertise a consultation, but they can also be used to identify your target audience – by seeing who is involved/interacting in communication networks relevant to a certain policy area. We also support the idea of a press release accompanying the consultation.
- In order to reach the relevant target groups and to make clear why they are targeted, for each consultation the objective should be clearly communicated. The cover note of the consultation should indicate a clear problem definition, a description of the possible options and its impact on the different parties involved.

3. Participation by stakeholders in open public consultations is often disappointingly low. How can the Commission encourage or enable more stakeholders to take part? How can the Commission better reach and engage underrepresented groups of stakeholders and assist them in replying to complex issues?

- It is important that the Commission actively approaches stakeholders in a timely manner to provide input and we welcome the methods to advertise mentioned in the guidelines. From conversations with businesses and trade organisations we learned that, instead of being approached in an ad hoc manner, they would rather be involved continuously during the process of creating and assessing legislation. Continuous outreach by the Commission to public and stakeholders supports the principles of openness and transparency and is therefore recommended. It would also be useful to keep the consulted stakeholders informed about the different steps in the process of creating legislation (e.g. by email-notification).
- The Netherlands welcomes and encourages the Commission's efforts in maintaining a vast network of stakeholders in different fields. These specific groups are useful to consult systematically and continuously in order to gain more insight from casuistry in the way legislation works in practice, besides the open consultations on the internet aimed at reaching out to a wide public. It is advisable to reach these groups in a targeted manner with targeted communication tools (e.g. platforms, LinkedIn groups, specific websites).
- The Netherlands has good experiences with internet consultation. In 2012, the Ministry of Economic Affairs started a dialogue via a LinkedIn group ('STROOM', counting 1320 members) to collect input for revised legislation on electricity and gas, with the aim of drafting clear and comprehensive legislation, with low administrative burden for businesses and authorities. The received responses led to reconsideration and amendments to the proposal. A first draft of the specific bill has been finished and will be subject to internet consultation once more. Given the valuable responses received, the Netherlands would recommend the use of LinkedIn as a medium to reach relevant stakeholders.

4. **Is there a risk of 'over consultation', making it difficult for you as a stakeholder to distinguish between important and less important consultations?**

- In general, we don't see a particular risk of 'over consultation'. Stakeholders would rather have more than less opportunity to be involved in legislation and they themselves are best capable to assess whether a consultation is relevant or not to them. To that end it is important that the Commission makes clear what the reasons and objectives of the consultation are.
- However, in order to maximize response to a consultation, an effort should be made to limit the approach of non-relevant stakeholders as much as possible, as this might decrease the chance that they will react on consultations relevant to them. This mostly applies to businesses, not to representations of sectors/businesses.
- For the identification of relevant stakeholders it could be helpful to set up an EC-wide database of stakeholders (instead of separate databases for the DGs), providing an overview of the contacts of the different DGs with certain stakeholders. This might be helpful to stimulate coherence in contacts with external parties and to avoid duplication.
- In order for stakeholders to be able to grasp the opportunity to participate in legislation they must have access to the right information. The Commission makes available a large amount of information, and this is of a high quality. But the medium through which it is made available (the Commission website) could be more clearly structured so that stakeholders are better able to find the information relevant to them. In addition, it could be made more clear on the Commission's website which group(s) of respondents are mainly targeted, e.g. companies or (national, regional or local) governments.

5. **Do you see a need to explain the limits of consultations in this guidance document?**

- We don't think this is indispensable, since under point 1.8 the consultation document already describes that the outcomes of a consultation may not be representative. It could however be taken into consideration to insert some sort of disclaimer which explains the fact that consultation has its limits.
- On page 7 is mentioned: ''Aspects which cannot be changed due to legal or political nature should not be subject of Consultation''. Can you explain what is meant by 'political nature' in this context?

6. **Do you think the guidelines provide enough guidance on how to analyse the results and assess the representativeness of respondents and how to provide feedback to stakeholders participating in a consultation? If not, how could this process be improved?**

- We think the guidelines provide enough guidance on analysis and assessment and we very much welcome the Commission's commitment to provide transparent and adequate feedback to stakeholders participating in a consultation. Providing feedback is essential for transparency and the legitimacy of choices made by the Commission. Also, it keeps stakeholders involved and stimulates them to also interact in future consultations. A lack of feedback may lead to the perception that the given advice during consultation has little influence on the final proposals. Currently, it is not always clear what is done with the stakeholders' advice and how the advice of different stakeholders is assessed. The procedure should become more transparent. We therefore share the Commission's suggestion to put a summary of the results on its website, and to include more information in the impact assessments on the consultation, with a clear explanation about what has been done with the stakeholder advice plus the reasons for not following up on this advice.

7. **Do you agree with the presentation of the different consultation steps (1-10)? Or, do you see additional steps?**

- Although we believe that the steps described cover the consultation process in general, we would recommend to incorporate the (mandatory) Commission's minimum standards for consultation (COM(2002) 704 final) in the 10 steps, in order to ensure that these are applied.
- Step 1 (1.6.1.): mapping of the stakeholders: it would be useful to further differentiate the type of stakeholder. E.g. under 2. 'Industry/business' SMEs could be added as well as regional/local [businesses] and the specific sectors.

8. **Do you think these consultation "tools and methods" are adequate or do you see others which should be referred to in the guidelines?**

- The description of the tools and methods in the annex provides a good basis for officials to decide on what approach to take for the consultation.
- With regard to the questionnaire it is important to avoid posing leading/biased questions.

9. **Do you have any other comments or suggestions, which could help make these Guidelines as comprehensive and clear as possible?**

- In addition to the guidelines it might be useful to draft a concise practical operational plan for the EC officials, which guides them through the different steps of the consultation procedure as described in the guidelines, including a practical overview of the steps and the different choices to be made and some useful tips and tricks to facilitate the work. In order to ensure correct execution of the consultation procedure, it would be useful to set certain concrete rules in the above mentioned operational plan or in the guidelines itself, for example indicating concrete minimum actions and setting time slots for the different consultation steps.
- Secondly, with regard to timing, we would advise not to launch consultations in summer, as they may attract little attention / responses and stakeholders may not have sufficient time to respond.
- Thirdly, we recommend to limit the number of questions in questionnaires. Too many questions might discourage potential respondents.
- Finally, it would be useful if the questionnaires can also be downloaded in Word format (instead or besides PDF), as respondents may need to consult others before responding.